Belarusian Helsinki
Committee (BHC)

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Alternative Report of Belarusian NGOs to UN Human Rights Committee about Implementation of International Covenant on Civil and Political Rights

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Contents

The alternative report was prepared by Belarusian human rights NGOs for the office of the UN High Commissioner for Human Rights with the aim to consider the implementation by the Republic of Belarus of its undertakings under the International Covenant on Civil and Political Rights (further referred to as ICCPR). Its materials contain references to more detailed reports and publications[1].

The report was prepared by the Belarusian Helsinki Committee (BHC) and the Human Rights Center *Viasna* with the use of materials of the Belarusian Assembly of Pro-democratic NGOs and the Belarusian Association of Journalists (BAJ).

About Conditions of Realization of Human Rights in Belarus

1. Belarus hasn't presented reports on the implementation of its undertakings under ICCPR for a long time. The government refuses to implement the decisions of the UN Human Rights Committee (further referred to as HRC) on individual communications. The Recommendations of the HRC that were made on 1997 on the results of the consideration of the IVth periodical review haven't been implemented and the situation of the fundamental political and civil rights and liberties has seriously deteriorated.

In March 2010 Belarus shot the death convicts V.Yuzepchuk and A.Zhuk in violation of its undertakings under ICCPR and the Optional Protocol to it, despite the fact that they had filed communications with HRC, being under the protection of Procedure 92.

2. During the last decade, the situation of human rights in Belarus was defined by a number of serious systemic problems, which was a subject for constant criticism both inside the country and at the international arena.

In particular:

a) the existing legislation imposes excessive restrictions on the fundamental human rights and liberties or creates considerable obstacles to their realization;

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[1] **Relevant for the whole text:**
a) reports, reviews and communications of Belarusian human rights organizations:
Review-Chronicle of Human Rights Violations in Belarus in 2003. Analytical review by the Human Rights Center *Viasna*. http://spring96.org/files/book/2003_review_en.pdf
Violations of Human Rights in Belarus in 2006. Analytical review by the Human Rights Center *Viasna*. http://spring96.org/files/book/2006_review_en.pdf
Violations of Human Rights in Belarus in 2007. Analytical review by the Human Rights Center *Viasna*. http://spring96.org/files/book/2007_review_en.pdf
Situation of Human Rights in Belarus in 2008. Analytical review by the Human Rights Center *Viasna*. http://spring96.org/files/book/2008_analytics_en.pdf
Situation of Human Rights in Belarus in January 2007-August 2008. Report of the Belarusian Helsinki Committee. http://www.belhelcom.org/?q=node/2073
b) reports, resolutions and reviews by international organizations:
Report of Adrian Severin, Special Rapporteur on the situation of human rights in Belarus. http://spring96.org/files/book/report_severin_2007_ru.pdf
About the situation in Belarus. European Parliament Resolution P6_TA(2005)0363.
European Parliament resolution on the political situation in Belarus after the parliamentary elections and referendum of 17 October 2004 P6_TA(2004)0045.
Situation of human rights in Belarus. Resolution of the General Assembly *[on the report of the Third Committee (A/61/443/Add.3)]* 61/175 of 8 March 2007.
Situation of human rights in Belarus. Resolution of the UN General Assembly *[on the report of the Third Committee (A/62/439/Add.3)*] 62/169 of 20 March 2008.
Situation of human rights in Belarus. Resolution 2005/13 of the UN Commission on Human Rights.
Situation of human rights in Belarus. Resolution 2004/14 of the UN Commission on Human Rights.
Situation of human rights in Belarus. Resolution 2003/14 of the UN Commission on Human Rights.
Situation in Belarus on the eve of the presidential elections. Resolution 1482 (2006) of the Parliamentary Assembly of the Council of Europe.
Situation in Belarus. European Parliament Resolution P6_TA(2004)0011.
Situation in Belarus. Resolution 1671 (2009) of the Parliamentary Assembly of the Council of Europe.
Situation in Belarus. Recommendation 1874 (2009) of the Parliamentary Assembly of the Council of Europe.

b) the principles of constitutional state are seriously violated, entailing arbitrary application of the law on political and economical motives, as a result of which several tens of public and political activists have become political prisoners already;

c) the role of the legislative and judicial powers and the local self-government is diminished by a gradual increase of the President's powers, which leads to a considerable weakening of the mechanisms of protection and recovery of human rights;

d) The Belarusian authorities have started taking certain steps for improving the situation since August 2008. First of all, we should note the early release of political prisoners and the decrease of the level of repressions towards opposition activists. In some cases, the authorities don't impose excessive bans on the realization of political and civil rights, whereas in other ones restrictive and discriminative practices are used. Apart from certain corrections in the Election Code, no amendments witnessing a systemic progress towards democratization were introduced into the legislation during the time when the report was being prepared.

Right to Life (Article 6 of ICCPR)

The number of the death verdicts issued in Belarus has considerably decreased since 1999. At the same time, Belarus remains the only country of Europe and the former USSR where the death penalty is still used.

Closeness of information about the use of death penalty

In Belarus, virtually all information concerning the death penalty is closed for the public. The state mass media (further referred to as media) draw only statistics about the number of the issued verdicts, without providing any information about their execution. As it is known from the official sources, 2 death verdicts were issued in 2009, 1 — in 2008, 4 — in 2007, 9 — in 2006, 2 — in 2005 and 2 — in 2004.

The lack of information about the number of issued and executed death verdicts sometimes leads to unconformity of the official statistics to the media information on the matter. In particular, in 2008 the media distributed information about at least two more death verdicts: the verdict of the Minsk City Court to Mr. Mikalai Kaliada (inured on 21 March 2008), and the verdict of the Homel Region Court to the Mr. Pavel Lenny (issued on 20 June 2008). According to later information of mass media, the verdict to Lenny was executed in October 2008. The official sources didn't provide such information.

About 140 death verdicts are known to have been executed since 1997. As yet, the information about their total number since 1991, when the independence of Belarus was declared, hasn't been published. The activity of the Commission on clemency and decisions of the President on the cases of death convicts are closed from the public.

Absence of guarantees of the legality of death verdicts

A number of the criminal cases on which death verdicts were passed were considered by the Supreme Court as the court of primary jurisdiction, which is a matter of our especial concern. According to Article 371 of the Criminal-Process Code (further referred to as CPC), verdicts of the Supreme Court aren't liable to cassation appeal; according to Article 399, part 2 of CPC they are inured immediately after the announcement. Thus, the persons who are sentenced to death by the Supreme Court are deprived of the right to review of the sentence by a higher court. Verdicts of the Supreme Court can be appealed only as already inured. Supervisory complaints can be filed with the Chairperson of the Supreme Court and the Prosecutor General who supervise the legality of the verdicts that are issued by the Supreme Court. However, the consideration of supervisory complaints takes place without holding court hearings and in the absence of the accused and their counsels.

On 5 February 2008 it became known about execution of the death verdicts to Ihar Danchanka, Valery Harbaty and Siarhei Marozau, three leaders of the gang that had operated in Homel for many years and was known as the 'gang of firemen'. The Supreme Court sentenced Marozau and Danchanka to death twice — in December 2006 and in October 2007; Harbaty was sentenced to death in December 2006. At the same time, the hearings on the cases related to the gang activities

still continued at the time when the verdict was executed: in January 2008 the Supreme Court accepted for consideration another criminal case against Marozau and three other members of the gang. However, on 19 February 2008, even before the beginning of the hearings, Marozau was shot. Such quick execution of the verdict could be connected to the fact that Marozau started testifying against some high-rank officers of the State Security Committee (further referred to as KGB) and the Ministry of Internal Affairs (further referred to as MIA), providing details of his criminal relations with them. All three executed were deprived of the right to review of the verdicts of the Supreme Court by a higher court instance. Moreover, the trial of Danchanka, Harbaty and Marozau was closed. Human rights defenders are of the opinion that points 1 and 5 of Article 14 of the International Covenant on Civil and Political Rights were violated in this case, which is also a violation of Article 6 of ICCPR according to recommendations of the UN Human Rights Committee.

HRC considers the procedure of execution of death verdicts in Belarus as inhuman treatment[2] (see the chapter *Ban on Torture and Cruel Treatment*).

In 2009, death verdicts were issued to Vasil Yuzepchuk (the verdict of the Brest Region Court of 29 June 2009) and Andrei Zhuk (the verdict of the Brest Region Court of 29 June 2009). The both verdicts were appealed at the Supreme Court that dismissed the appropriate cassation complaints, after which individual communications were filed with the HRC on behalf of the convicts. These communications were found acceptable and were registered (the communication of Yuzepchuk — 1906/2009, the communication of Zhuk — 1910/2009). UN Procedure #92 was started concerning the both communications, and the Belarusian authorities were informed about it. However, in March 2010 it became known that Yuzepchuk and Zhuk had been executed.

The use of the death penalty also causes especial concern due to the absence of independent court system and advocacy, paralleled by cases of torture at the stage of preliminary investigation (see *Ban on Torture and Cruel Treatment* for more detailed information), as well as other unlawful methods of investigation and evident imparity of the powers of the procuracy and the defense. This aspect has been repeatedly emphasized by Belarusian human rights defenders and international organizations.

The Belarusian authorities don't take enough efforts to investigate the celebrated cases of politically motivated forced disappearance of A.Krasouski, V.Hanchar, Yu.Zakharanka and Dz.Zavadski, or at least nothing is known about such efforts. The international community suspects high-rank Belarusian officials in the involvement with these disappearances.

Thus, despite the decrease of the number of death verdicts during the 10 last years, Belarus didn't follow the Concluding Observations of HRC of 19 November 1997[3] (further referred to as the Concluding observations of 1997). Belarus has neither abolished the death penalty nor introduced a moratorium on it.

Ban on Torture and Cruel Treatment (Article 7 of ICCPR)[4]

Human rights defenders of Belarus receive numerous complaints about the use of torture by officers of law-enforcement agencies. This problem has a latent nature, as citizens rarely file such complaints with the state organs because of their fear before the law machinery. Superficial investigation into such allegations should be also taken into account. The state abstains from taking the due measures for investigation into facts of torture. The officers who used torture are punished only in single cases. Moreover, the existing criminal legislation doesn't contain the notion of torture, though this term is used in a number of articles.

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2 CCPR/C/77/D/886/1999 Bandarenka v. Belarus

3 Concluding observations of the Human Rights Committee: Belarus. 19/11/97. CCPR/C/79/Add.86

4 Appeal of the Human Rights Center *Viasna* and the International Federation for Human Rights (FIDH) to the UN Special Rapporteur on Torture in Belarus. http://spring96.org/en/news/30137

Contemporary Situation in Penitentiary Institutions of Republic of Belarus. Report of the Belarusian Helsinki Committee within the guidelines of the project *Promotion of Culture of Human Rights in Penitentiary Sphere in Republic of Belarus*. http://www.belhelcom.org/?q=node/2001

Judiciary and Human Rights (a report that sums up the results of the monitoring of trials in 1999-2001). Report of the Belarusian Helsinki Committee. http://belhelcom.org/?q=ru/node/2407

Many aspects of the prison conditions and the treatment of convicts and the persons who are kept in custody and in other places of forced keeping (activity therapy centers and open prisons for those who are sentenced to personal restraint) can be also considered as cruel treatment or torture. However, the penitentiary system is inaccessible for the public control, which prevents the civil society from sufficient study of the incarceration conditions. Organs of the Ministry of Justice have established public commissions for control of penitentiary institutions without including any human rights defenders in them, and the work of such commissions is generally ineffective.

Torture of detained participants of peaceful assemblies

Facts of torture and other inhuman treatment of detained participants of opposition protest actions by officers of law-enforcement agencies are registered.

On 22 March 2006, officers of the riot police regiment of the Minsk City Police Deparment detained Kanstantsin Usianok for participation in the protest action in Kastrychnitskaya Square in Minsk. The detainee was taken to a paddy wagon, where the police started beating him. One of the policemen tore the T-shirt from the youngster's body and tried to stuff it into his mouth, as a result of which the detainee suffered the rupture of the frenulum of tongue. These actions were accompanied with beating, rude cursing and insults. K.Usianok twice addressed the Tsentralny District Procuracy of Minsk with the request to instigate a criminal case against the police officer. However, the procuracy refused to do it as no evidence of the unlawful actions of the police officer was discovered during the check-up of the facts that were stated in his complaint.

On 22 July 2006 the youth leader Ivan Shyla was forcedly detained in Salihorsk during an action in support of the political prisoner Aliaksandr Kazulin. The police beat him and then threw a lit cigarette behind his sweater, as a result of which he suffered a burn. His brother Illia, who took photos of the detention, was also severely beaten and guarded to the police station in handcuffs. The unlawful actions of the police were appealed at the procuracy without any positive results.

Having been beaten by the riot policemen V.Kuranok and S.Matlokh (who were dressed in mufti and didn't introduce themselves), Tatsiana Tsishkevich spent 8 days in the neurosurgical department of the 9th clinical hospital with the diagnosis 'closed cranial trauma, numerous bruises of face, head, neck, trunk and limbs and nephritis'. All attempts to bring the riot policemen to justice gave no result, as neither police colonel V.Siniakou, Chairperson of the Tsentralny District Police Department, nor Yury Padabed, commandant of the riot police regiment, or A.Nikalayeu, an investigator of the Tsentralny District Procuracy of Minsk, considered their actions as abuse of the official powers.

The participants of the protest rally of entrepreneurs of 10 January 2008 Mikhail Kryvau, Arseni Pakhomau and Mikhail Pashkevich were severely beaten. Tatsiana Tsishkevich was severely hit in the head during the detention. The police also fractured a rib to Yury Kasiuk. Despite the traumas, the detainees spent the night at the delinquents' isolation center without medical assistance. An ambulance was called for them only during the trial, on demand of the counsel.

Various injuries were inflicted to more than 20 persons as a result of the forced dispersal of the peaceful rally of 25 March 2008. Two detainees, Yaraslau Hryshchenia and Yury Karetnikau, were hospitalized. Despite all appeals of the injured to the procuracy, no one was drawn to criminal responsibility.

Torture of journalists and human rights defenders

On 2 March 2006, a correspondent for the *Komsomolskaya Pravda v Belorussii* newspaper, Aleh Ulevich, was severely beaten near the Kastrychnitski District Police Department in Minsk, where Aliaksnadr Kazulin, a presidential candidate, was guarded. Having received a punch in the face the journalist was taken to hospital with the diagnosis 'closed cranial trauma with fracture of the nasal bones'. A criminal case under Article 149, part 1 of the Criminal Code (further referred to as CC), 'intentional infliction of a severe bodily injure', was instigated on Ulevich's appeal. It was suspended and renewed several times during the year. However, no one was brought to justice 'in connection with the failure to establish the person liable to be brought to trial as accused'.

On 17 March 2006, Uladzimir Vialichkin, a well-known human rights defender and public activist from Brest, was detained by unidentified persons in mufti, who then proved to be police officers. He was forcedly pulled into a car, during which the offenders hit him with their fists. Then they put a black bag on his head and drove him around the city for more than two hours, insulting and intimidating him. Then Mr. Vialichkin was guarded to the court and was sentenced to 5 days of arrest on charges in 'disorderly conduct' (using obscene language in public).

Torture at the stage of preliminary investigation

No abuses of the office powers were discovered in actions of officers of the Orsha Town Police Department (Vitsebsk region) during the interrogation of the youth activist Siarhei Huminski on 10 January 2007, when they demanded that he confess making graffiti. An unidentified person in mufti and the police captain Laryionau put his hands in handcuffs and hit him in the face, chest and kidneys. When one of the handcuffs unlocked, the man in mufti started holding Huminski and kicking him in the back, while captain Laryionau punched him in the face. The mockery was accompanied with demands to give testimony in Russian instead of Belarusian, obscenities and insults. When the detainee demanded to be provided with a lawyer, they started beating him more severely. Each refusal to sign the protocol with confessions was accompanied with blows. The doctors of the local hospital, where the activist came immediately after the interrogation, registered numerous bodily injuries. Despite the results of the forensic expertise, the procuracy refused to consider the actions of the police officers as unlawful and draw them to account.

Each year BHC receives hundreds of letters and complaints of citizens about the use of torture by officers of law enforcement agencies.

In February 2010, the case of torturing Pavel Leushyn, a foreman of the Unitarian enterprise *Tseplasetsi*, received publicity as a result of an article in the private newspaper *Narodnaya Volia*. Pavel Levin applied to BHC in connection with this fact. In his appeal, he stated that officers of the Savetski DPD of Minsk tried to make him confess in a theft from a building project with the use of torture. In particular, they delivered many blows by their hands and feet, plastic bottles with water and truncheons. They also repeatedly pulled him by handcuffs, causing physical pain and suffering, and smothered him putting a plastic bag on his head. The forensic expertise registered numerous scratches and bruises, caused by a blunt solid object. Despite this, no criminal case was brought against the police officers 'because of the absence of corpus delicti'. However, after the publication in *Narodnaya Volia* and the following public resonance, the ruling about the refusal to instigate a case was reversed by a higher prosecutor and the case materials were directed for a new check-up.

Torture of the persons who are forcedly kept in medical institutions

The situation of the persons who are kept in psychiatric hospitals, activity therapy centers and the institutions where forced treatment of those who are ill with tuberculosis is conducted, (according to Article 46 of the Law *On Health Care*, the persons who are ill with tuberculosis can be subject to forced hospitalization on court verdict) causes concern as well. What concerns the latter category, there were registered several cases of protest hunger-strikes of the sick. In particular, patients of the republican tuberculosis hospital *Navayelnia* (situated in the settlement of Navayelnia in the Dziatlava district of the Hrodna region) went on hunger-strike in the beginning of 2008 to protest against unsatisfactory conditions of hospital treatment.

In May 2008, publicity was given to the situation in the regional tuberculosis hospital situated in the Settlement of Bahusheusk, in the Sianno district of the Vitsebsk region). The patients applied to independent mass media because of inhuman conditions of keeping and treatment in the hospital. They complained about poor nutrition, violations of the sanitary norms, the absence of radio, TV and newspapers, the impossibility to use sauna and restrictions on walks.

The Republic of Belarus doesn't implement to the full extent the Concluding Observations of 1997. The cases of torture don't receive a proper investigation as the procuracies often refuse to instigate cases on complaints of the victims. MIA, who is responsible for the system of penalty execution, doesn't conduct any appropriate training of its staff with the aim to prevent torture and other kinds of cruel and inhuman treatment in the light of Article 7 of ICCPR.

HRC considers the procedures of the execution of death verdicts in Belarus as cruel and inhuman treatment[5]: the relatives aren't provided with information about the dates of execution, don't receive either the personal belongings of the executed or their bodies for burial and aren't informed about the place of the burial. Despite the address of HRC to the Belarusian authorities concerning the case *Bandarenka v. Belarus* and the demand to inform his mother about the place of his burial and compensate her suffering, she still doesn't know where the body was buried. Such procedure of executing the death sentences (non-issue of the bodies of the executed persons to their relatives) is still in use.

Ban on Forced Labor (Article 8, Paragraph 3 of ICCPR)

The analysis of the legislation and the practice of law enforcement show that forced labor is used in Belarus. The elements of forced labor that don't fall under the reservations provided in point 'c' of Article 8, paragraph 3 of ICCPR, are registered in several spheres.

Forced labor of soldiers of statutory service

The Law *On the Status of Military Servicemen* admits 'drawing servicemen to works and performing other duties that are not determined by military service, during the period of military service'. The Ministry of Defense actively uses this right. Soldiers do the work not on their own will, but under the pain of punishment for non-implementation of orders. No payment is provided for their labor. Moreover, the Ministry improved by its Ruling #71 of 29 November 2004 the Instruction about drawing soldiers of the Armed Forces of the Republic of Belarus to performing duties that aren't determined by military service. Among other things, soldiers of statutory service can be drawn to works on rendering paid services by military units. It means that the Ministry of Defense uses free forced labor of servicemen in its commercial activity, often acting as contractor.

There are the following traits of forced labor of servicemen: 1) soldiers act on the order of the commandant (according to Article 20 of the Law *On the Status of Military Servicemen*, they must implement the orders of commandants and superiors timely and with implicit obedience), the non-implementation of an order entails disciplinary and other punishment; 2) soldiers do the work (render the services) that aren't determined by the direct implementation of their military duty (the Constitutional duty to defend the Republic of Belarus); 3) their labor cannot be regarded as work on voluntary employment; 4) they don't receive an appropriate payment doing the work (rendering services).

Forced labor of young professionals

In 2002, the obligatory job placement of the young professionals who were educated at the expense of the state budget was introduced in the Law *On Education*. These persons are obliged to work on assignment for one year — after receiving vocational education and two years — after receiving a higher education, in the places that are determined by the assignment commissions. The assignment of young professionals is used in Belarus as a means of mobilizing the labor force for the needs of the economical development of the country and some of its regions without abidance by the principle of voluntary employment. The employers are prohibited to dismiss young professionals till the end of the obligatory term of work, except for dismissal through the employees' fault, which entails the reimbursement of the means that were spent by the state on their education.

In December 2009, an individual communication prepared by BHC on behalf of the young professional Illia Sennikau was filed with HRC. The state demands him to pay more than 13 mln rubles (almost 4.5$ rubles) for the failure to work on assignment for two years. In 2001 the youngster entered Belarusian State Polytechnic Academy (now it is called Belarusian National Technical University) after successfully passing the entrance exams. In 2006, he became a certificated specialist and was assigned to the open stock society *Building Trust #21* in the town of Barysau in the Minsk region. However, he didn't want to work on assignment, explaining his position with 'domestic inconveniencies': he needed to travel three hours a day to get to his work, whereas the wage was signif-

[5] CCPR/C/77/D/886/1999 Bandarenka v. Belarus; CCPR/C/77/D/887/1999 Liashkevich v. Belarus

icantly lower than that proposed in a private firm. As stated by Sennikau, he asked the employee to annul the employment agreement. However, the administration refused to do it, referring to the legal ban on the dismissal of young professionals within two years after graduation from higher educational establishments. Seeing no other possibilities to quit, Illia simply stopped appearing at work and was dismissed for truancy. In response, the university filed a claim for reimbursement of the means that had been spent on his education, which was granted by all court instances.

Forced labor of obliged parents

In 2006, the President issued Decree #18 *About additional measures for the state protection of children in problem families*. According to this decree, children are taken away from problem families and the obligation to compensate the expenses for their keeping in the state orphanages is imposed on the parents. The decree also provides for forced employment (on court verdict) in the case of non-payment of these expenses, along with criminal punishment for evasion from work.

Forced labor of persons suffering from alcoholism

The Law *About the measures of forced influence on the chronic alcoholics and drug addicts who regularly violate the public order* establishes that 'chronic alcoholics and drug addicts can be isolated for 12-18 months at activity therapy centers on the basis of court verdicts, with the aim of their medico-social readaptation, the course of which includes obligatory work. The labor legislation doesn't spread on these persons. The direction to ATCs is conducted within the limits of civil legal proceedings and is not a sanction connected with commitment of unlawful acts (crimes) by the isolated persons. The system of ATCs is a part of the system of penalty execution of MIA, but forced labor of the persons who suffer from alcoholism is presented as a means of their 'treatment'.

About 5,500 citizens were directed to ATCs for nine months of 2009.

Meanwhile, the state is seemingly interested in directing citizens to ATCs and presents it as a high achievement of its social policy. For instance, the transfer of 45 persons to an ATC from the delinquents' isolation center of the Minsk City Police Department on 15 January 2009 took place in a solemn atmosphere, with the accompaniment of an orchestra. The issue of the MIA newspaper *Na Strazhe* for 4 September 2009 contained an article *Thousand of directed to activity therapy centers is not an end in itself, but a fully achievable result* that presented high indices of the activity of the law-enforcement agencies on direction of people to ATCs and voiced the intention to increase them in future.

Right to Liberty and Immunity of Person. Unlawful Detentions and Arrests (Article 9 of ICCPR)[6]

CPC that was enforced in 2000 inherited the traditional defects of regulation of the procedures of detention and pre-trial detention as a restraint.

Discrepancy of the national legislation with the norms of ICCPR

Athwart the norm of Article 9, paragraph 2 of ICCPR, CPC ordains to explain the reasons for detaining a person only after guarding to the organ of criminal persecution and drawing a report, not during the actual detention (Article 110 of CPC).

A person who is suspected in commitment of especially hard crimes and some hard crimes can be detained for 10 days on the basis of a ruling of the organ of criminal persecution (Article 108 of

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[6] Concerning the question about the right of citizens to judicial protection. Appeal of the Belarusian Helsinki Committee to the Supreme Court of the Republic of Belarus. http://www.belhelcom.org/?q=node/2145
Enforced disappearances. Resolution 1463 (2005) of the Parliamentary Assembly of the Council of Europe.
European Parliament Resolution on Belarus P6_TA(2005)0363.
Disappeared Persons in Belarus. Resolution 1371 (2004) of the Parliamentary Assembly of the Council of Europe.
Situation in Belarus on the eve of the presidential election. Resolution 1482 (2006) of the Parliamentary Assembly of the Council of Europe.

CPC) in the circumstances that are set forth in CPC. After the end of this term the person is either released from custody or a restraint is applied.

‘The Committee notes with concern that pre-trial detention may last up to 18 months, and that the competence to decide upon the continuance of pre-trial detention lies with the Procurator and not with a judge, which is incompatible with article 9, paragraph 3, of the Covenant. The Committee also notes with regret that it has not been clarified in the report or in the course of the discussion whether proceedings before a court challenging the lawfulness of the detention, in accordance with article 9, paragraph 4, of the Covenant, are available to persons thus detained,’ reads paragraph 10 of the Concluding Observations of 1997.

The situation hasn’t changed since 1997. The sanctions for pre-trial detention are still issued and prolonged by prosecutors, though procuracies support the accusation at court, i.e. are an interested party. The question of issuing the sanction is decided in the absence of the suspect.

Pre-trial detention on suspicion in commitment of a hard or especially hard crime can be motivated solely by the nature of the crime, regardless of the personality of the suspect and without analyzing whether the person can go hiding or continue criminal activities (Article 126 of CPC).

The cases of continuous pre-trial detention are not infrequent. In particular, the entrepreneurs Uladzimir Asipenka and Mikalai Autukhovich were kept in detention for more than a year. Meanwhile, according to information of Autukhovich’s counsel, the investigative measures towards the accused were conducted very seldom. The counsel lodged several petitions for change of the restraint, but they weren’t granted.

As a rule, pre-trial detention is used as the default restraint for suspects and accused. The law-enforcement agencies rarely use alternative kinds of restraint, such as release on bail, release on undertaking not to leave, release under a personal guarantee, etc.

Judicial appeal

It’s worth noting that though CPC provides the right to judicial appeal of incarceration, the procedures of judicial appeal against this restraint are ineffective. In practice, such complaints are filed very seldom and are practically always futile.

In February 2010, after introduction of amendments to CPC, courts got the right to assess not only the legality of pre-trial detention, but also its validity. However, the court practice on this category of cases hasn’t shaped yet.

Arbitrary detentions

Considerable violations of liberty and immunity of person regularly take place during the dispersal of peaceful protest actions by the police.

Participants of such actions and sometimes accidental passers-by are pushed into busses and guarded to police stations. Cases were registered when detainees were subject to beating, insults and other degrading forms of treatment by the police on the way. At the police departments, the detainees are photographed and fingerprinted. Many of them are released without getting any charges, but cases of administrative punishment are quite frequent as well.

There were also instances\ of unlawful detentions of public and political activists and their transportation outside their settlements to the places that are quite remote from transport communications. Uladzimir Lemesh was seized in the evening of 27 November 2009 in Minsk. He was put into a car without number plates. A cap was pulled down on his eyes and his hands were put in handcuffs. Lemesh was driven out of the city and left 500 meters away from the highway Minsk-Slutsk, 25 km away from Minsk. His mobile telephone was taken away.

On 5 December, the day when the agreement for creation of the youth coalition *New Generation* was signed, unidentified persons kidnapped Dzmitry Dashkevich, the leader of the youth organization *Young Front*. He was assaulted by five men at the door of his apartment. They lead Dzmitry out of the porch, pulled two caps down on his eyes and put him in a minibus. He was driven for more than 5 hours, after which the kidnappers left him in a forest near the village of Antonauka, in the Lahoisk district of the Minsk region. A bag with documents and a mobile phone were stolen from Mr. Dashkevich. His laptop was stolen from the apartment that remained open after his kidnapping.

On returning to Minsk, Dzmitry Dashkevich lodged a complaint with the Zavadski District Police Department of Minsk. The police paid a visit to his apartment, allegedly to check the fact of theft of the laptop. Haven't found the laptop there, they confiscated 34 copies of the book *Young Front Activists*, 16 copies of the book *Heroes of Faith of Old Testament* and 186 signature blanks in support of the equal status of the Russian and the Belarusian languages. According to the police officers, these materials could be used for checking the fact of the abduction.

In the evening of 6 December 2009, the coordinator of the *European Belarus* Yauhen Afnahel was kidnapped by unidentified persons in Bialinski Street in Minsk. He was heading for a meeting when he was approached by the policemen who searched his bag and went away. Then Afnahel took a bus. He was seized at a bus stop, pushed into a car and driven around the city for about 20 minutes. He was ordered to put his head on the knees so that he wouldn't see the streets. Mr. Afnahel was driven out the city and left near the village of Zhukau Luh, 3 km away from Minsk. He was returned his photo camera without the accumulator, and the mobile, in one of which the accumulator was missing as well.

At about 5 p.m. on 25 March 2009, after the festive actions on the occasion of the Freedom Day, the leaders of the *Young Front* Dzianis Karnou and Anastasiya Palazhanka were seized by unidentified persons who pulled caps down on their eyes, put them into cars, took away their mobile phones and drove them in unknown direction. A.Palazhanka was set down near the village of Tarasava, whereas D.Karnou was dropped on the same highway, but at a further distance from Minsk. The abductors also cut his jeans into strips with a knife.

The practice of preventive arrest of hundreds of opposition activists was widely used on the eve of mass actions of protest during the presidential election. As a rule, they were sentenced to 5-15 days of arrest on charges in 'disorderly conduct'. About 700 activists received such penalties in March-April 2006.

More than 2 mln people were subject to forced dactilography in 2008-2009 with the use of various threats. This procedure was used on the basis of an unlawful order of the interior minister and was allegedly aimed at collecting the data for investigation of the explosion that had taken place at celebration of the official Independence Day in the morning of 4 July 2008. Courts and procuracies don't consider properly the complaints of citizens about the violations that were admitted by police officers.

In 2008-2009 law enforcement agencies regularly guarded to district police departments the persons who were detained at peaceful protest actions. The detainees were kept there for up to three hours (the legal term for identification), and then were released without getting any charges. As a rule, they were purposefully kept at the police departments and were detained on special lists.

Such measures are used most actively during large actions of the opposition. In a number of cases, the activists who were going to such actions from other settlements were detained at railway station in order to prevent them from boarding on trains.

Right of Persons Deprived of Their Liberty to Be Treated with Humanity and Respect for Inherent Dignity of Human Person (Article 10 of ICCPR)[7]

The Republic of Belarus is still among the leaders in prison population. Amnesties are declared every 12-18 months in order to decrease the number of prisoners, which changes the sense of punishment.

Paragraph 11 of Concluding Observations of 1997 recommends that steps be taken to improve prison conditions, including conditions for prisoners on death row, and that in so doing account be taken of the Committee's General Comment #21 (44) on article 10 of the Covenant and the United

[7] Prison Conditions in republic of Belarus. Joint report of the Human Rights Center *Viasna* and the International Federation for Human Rights in 2008. http://spring96.org/files/book/conditions_of_detention_2008_ru.pdf Contemporary Situation in Penitentiary Institutions of Republic of Belarus. Report of the Belarusian Helsinki Committee within the guidelines of the project *Promotion of Culture of Human Rights in Penitentiary Sphere in Republic of Belarus*. http://www.belhelcom.org/?q=node/2001

Nations Minimum Standard Rules for the Treatment of Prisoners. The Committee recommends in particular that the practice of 'punishment cells', in which particularly harsh conditions are imposed on prisoners, and the use of pressovchiki, are contrary to the Covenant, and recommends that their use be abolished.

These recommendations haven't been practically implemented by the state. Disciplinary penalties are often accompanied with inadmissible restrictions and the procedures of their use create preconditions for arbitrary and excessive punishment.

Violation of the right to human treatment and respect for the inherent dignity of the human person was also noted by HRC in communication CCPR/C/86/D/1100/2002 on the case Bandazheuski v. Belarus. In his complaint, the author indicated that, athwart Article 10, paragraph 1, the conditions in the Homel pre-trial prison #3 where he had been kept on 13 July-6 August 1999 were unsatisfactory, as he had been unable to have any items for personal hygiene or adequate personal facilities. This information wasn't disproved by the state, and the Committee found that the conditions of Bandazheuski's detention witness violation of his rights under Article 10, paragraph 1 of ICCPR.

Supervision of the penitentiary system

The organs of the Justice Ministry established the public commissions for supervision of penitentiary institutions. However, the composition of these commissions and the procedure of their establishment predefined their ineffectiveness. Human rights defenders weren't included in the commissions. Though human rights organizations receive numerous complaints about gross violations of prisoners' rights, including the obstacles put by the prison administrations to the filing of complaints, the commissions aren't authorized to check complaints against the prison conditions. The departmental and prosecutorial supervision can't be called effective either, as the wish to save the honor of the regiment and the accusative nature of the procuracy are manifested there.

Prison regime

No complex measures have been taken for humanization of the criminal-executive system (CES), which is still oriented rather on punishment of the persons who are deprived of their liberty than on their reformation and social rehabilitation. CES is charged with disclosure of crimes, which entails the domination of the investigation and search operations over all other tasks. This is also facilitated by the fact that CES is a part of the MIA system.

The excessive closeness of the system of preliminary investigation and penalty execution doesn't allow organizing the public control that is necessary for its effective functioning.

The court appealing against disciplinary punishments is not practiced, though such possibility is provided by CPC (Article 113, paragraph 11), as the courts refuse to consider such complaints referring to the absence of the special procedures regulating the order of their consideration.

The problem of the accessibility and effectiveness of medical aid is noted in all institutions of CES, which is mostly caused by the lack of financing. Despite the measures taken, the spread of tuberculosis has a dangerous scope. According to some assessments, the real number of the persons who are ill with it is 20-50 times higher than the official statistics.

As a rule, pre-trial prisons are defined by much harder conditions than institutions of the penitentiary system. There are numerous registered cases of unsatisfactory nourishment, sanitary and hygienic conditions, absence of bed clothes, detention in unheated buildings during the heating season and degrading treatment by the personnel. As a rule, there is a lack of sleeping places and the practice of sleeping in turn is widespread. Such conditions must often be considered as torture and inhuman treatment and punishment.

Right to Liberty of Movement and Freedom to Choose Residence (Article 12 of ICCPR)

Right to liberty of movement and freedom to choose one's residence within the territory of the Republic of Belarus

There's no noteworthy progress concerning the right to liberty of movement and freedom to choose a residence despite the abolition since 1 January 2008 of the Prapiska (residence permit) system inherited from the Soviet Union. Presidential Decree #413 of 7 September 2007 *On development of the system of registration of citizens at the place of regular and temporary residence* banned the dwelling without an official residence permit.

The possibility to obtain the permit depends on the number of square meters in one's accommodation. The conditions for the residence registration in Minsk are stricter than in other towns and cities of Belarus: about $20m^2$ of floorage is necessary for it there opposed to $15m^2$ in other cities. Moreover, unlike other settlements, in Minsk this demand is spread on the close relatives who are registered in the place of residence. The registration of the temporary residence of all persons coming to Minsk is obligatory, unlike other settlements, where it is not necessary. Such difference is explained by the special status of the capital and the wish of the authorities to regulate and limit the number of the dwellers by administrative methods.

Administrative punishment is still provided for dwelling without registration (Article 23.34 of the CoAO). The possibilities to receive a passport, participate in elections and receive medical aid depend on possession of the residence permit.

The right to leave the country

According to Presidential Decree #643 of 17 December 2001 *About simplification of the order of leaving the Republic of Belarus*, the permissive seals for traveling abroad were repealed on 1 January 2008. On the other hand, the decree determines the categories of persons who can be denied the right to leave Belarus: the citizens who are aware of the state secrets (till cessation of the impeding circumstances); those who are suspected in criminal offences (till the end of the legal proceedings); those who are serving penalties for criminal offences, except if punished with deprival of the right to hold certain posts or run certain activities (till serving the conviction or liberation from it); those who evade from the duties that are imposed on them by court (for the term that is established by the court, but no longer than the moment when the duties are implemented by them); those who evade from military draft or service in the military reserve (till appearance at the measures of drafting or service in the reserve).

Foreign travel restrictions can be imposed not only on the persons who are convicted for criminal offences, but also on the people who are defendants on civil lawsuits. Bear in mind that in these cases such measures can concern the persons who aren't offenders, as the restrictions are introduced regardless of the outcome of the legal proceedings.

The legislation imposes excessive restrictions on leaving the territory of Belarus. The total number of the people who fall under such restrictions is about 125,000, which comprises more than %1 of the country's population.

The authorities use foreign travel restrictions and control the foreign travels of political and public activists, subjecting them to adverse discrimination (see the chapter *Equality before Law and Ban on Discrimination*).

Further restrictions on the right to leave the country were imposed by Presidential Decree #3 of 9 March 2005 *On certain measures for counteraction to trafficking in people*. The document provides that the citizens who study in organizations of the education system of the Republic of Belarus can be directed to studying abroad only on written agreement of the Ministry of Education or other appropriate state organs.

There were registered some cases of adoption of local normative acts that limit the liberty of movement and therefore contradict to the Constitution. For instance, according to order #71-ad of 27 March 2008 of Mahiliou State University named after A.Kuliashou, the personnel and students of the university must inform the administration about their travels abroad not later than two weeks

before the day of the departure. Students and workers of the university had to sign for being aware of this order. Judges and prosecutorial workers have to receive the consent of the administration for traveling abroad, including on vacations and holidays.

Despite the formal repeal of the Prapiska system, many restrictive measures inherent in it survived in Belarus. The Belarusian authorities still regulate the number of visitors to Minsk by administrative methods referring to the 'special status' of the city. That's why the Concluding observations of 1997 weren't implemented to the full extent.

Right to Fair Trial (Article 14 of ICCPR)[8]

Equality of all persons before the courts and tribunals (Article 14, paragraph 1 of ICCPR)

In 2006, CPC was supplied with new norms establishing a special order of criminal legal proceedings concerning certain categories of persons, whose posts are included in the personnel register of President, as well as deputies, assessors in People's courts and prosecutorial workers. The decision on instigating criminal cases against these categories of persons and imposing restraints on them are taken by the Prosecutor General on consent of President. Such order further increased the dependence of the judiciary on the executive power and President in particular.

According to the innovations in CC and CPC, persons can be freed from punishment by a President's act in connection with voluntary reimbursement of the damage done. This procedure takes place before passing the case to the court. The sole initiative of the law-enforcement agencies is insufficient for freeing the persons from criminal punishment, as the consent of President is necessary. The procedure of indemnity is closed and no acts of President are published on this matter. Such innovations not only extend the powers of President that aren't determined by the Constitution, but also violate the principle of equality before the law. The presumption of innocence is violated here as well, as long as the guilt of the person in not judicially proved. The accused detainee, who is in danger of a long-term imprisonment, has to compensate the damage that hasn't been proved by court.

The practice of the unlawful application of criminal justice towards political opponents continues (the case of the former presidential candidate A.Kazulin, the case of the unregistered association *Partnership*, the cases of activists of the unregistered youth association *Young Front*, the *Process of 14*[9] , etc.)

Independence and impartiality of the court

The dependence of judiciary is a serious problem. The real participation of the judicial self-government in the choice of candidates for judges and their further career has been reduced to a minimum. Judges aren't chosen by objective criteria, and the process of choice is closed from the public. In fact, judges are selected by the Ministry of Justice and its local organs. The chosen candidacies are discussed with the heads of the local administrations and are directed to the personnel department of the Presidential Administration. The final decision is taken by President who signs the orders of appointment. The judges are appointed for the first time for a five-year period. Then they are appointed for life. However, often judges can be appointed for another five-year term depending on the results of their work. Meanwhile, the law doesn't contain precise criteria for appointing a

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8 Report of the Special Rapporteur on the independence of judges and lawyers, Dato' Param Cumaraswamy, submitted in accordance with Commission resolution 2000/42 (E/CN.4/2001/65/Add.1)
Concerning the question about the right of citizens to judicial protection. Appeal of the Belarusian Helsinki Committee to the Supreme Court of the Republic of Belarus. http://www.belhelcom.org/?q=node/2145
Resolution 1606 (2008) of the Parliamentary Assembly of the Council of Europe on the abuse of the criminal justice system in Belarus.
Recommendation 1832 (2008) of the Parliamentary Assembly of the Council of Europe on the abuse of the criminal justice system in Belarus.
Judiciary and Human Rights (a report that sums up the results of the monitoring of trials in 1999-2001). Report of the Belarusian Helsinki Committee. http://belhelcom.org/?q=ru/node/2407

9 Expert Conclusion of Belarusian Helsinki Committee on *Case of 14*. http://www.belhelcom.org/?q=node/2075

judge for life or for five years. This situation makes judges quite vulnerable, and the possibilities for their pressurization increase.

The established order of rewarding judges along with their dependence on the executive power and the Presidential Administration on issues of personnel work, social and living conditions jeopardize their ability to make independent and lawful decisions on cases.

The excessive control of the executive power over the judiciary organs and examples of their rude interference in the administration of justice witness the violation of the principle of the independence of judges, many of whom put up with the existing situation. A similar control is exercised over the activities of prosecutors and counsels, undermining the independence of lawyers and violating the fundamental principles inherent in their social role. Such control entails the abuses resulting in deserved accusations of the executive authorities in harassment and intimidation.

The specified problems were raised in the Report of the Special Rapporteur on the independence of judges and lawyers, Dato' Param Cumaraswamy, submitted in compliance with Commission resolution 2000/42 of the Commission on Human Rights. However, none of the recommendations made by the Special Rapporteur were implemented by the government of Belarus.

Publicity of legal proceedings

Judges arbitrary use grounds for considering cases at closed trials, especially politically motivated cases and celebrated corruption cases concerning the highest echelons of power. In a number of instances, obstacles are created for representatives of mass media and human rights defenders (the closed trials of a former Chairperson of the Belarusian State TV and radio Company, Ya.Rybakou, the presidential administration H.Zhuraukova, the Deputy Chairperson of the main ideological department of the Presidential Administration M.Sniahir, a group of high-rank MIA officers who were accused of corruption crimes, etc.)

The norms that are aimed at ensuring the competitiveness of the legal proceedings, equal participation of the sides in presenting evidence and guaranteeing the competitive function of counsels have been introduced since 2001. The present legislation is void of concrete mechanisms for practical implementation of these guarantees. In practice, it doesn't provide a real protection of the rights and liberties of a person. The process legislation limited the participation of the public in trials. Though provided by the new CPC, the institution of the jury wasn't introduced, and later was removed at all. The number of cases allowing the participation of people's assessors has considerably decreased as well.

Ensuring the right to legal defense

The cost of the legal aid is disproportionally high compared to the citizens' income. The number of counsels is insufficient (1 counsel per 5,700 citizens). Moreover, counsels are completely absent in a number of administrative territorial units. The defense in the 1/3rd of all criminal cases is provided at the expense of the state and is minimal. It is conducted by lawyers formally and superficially.

Article 1989 of CPC prohibits counsels to disclose any information of the preliminary investigation under the pain of criminal punishment. At the same time, the law doesn't determine the criteria according to which information on criminal cases can be referred to the data that need to be protected from disclosure. As a result, counsels refuse to give any information about the cases for fear of criminal or disciplinary punishment, including information about violation of the process rights of their clients.

Courts violate point 'e' of Article 14, paragraph 3 of ICCPR by unmotivated dismissal of motions of the defense for calling witnesses, which violates the principle of equality of the sides at the trial that is guaranteed by the legislation. In some cases, verdicts are grounded on testimonies of anonymous witnesses. The defense cannot check the truthfulness of these testimonies as the court dismisses all questions about the source of information that is set forth in the testimony. This practice is justified by the necessity to protect the witness.

In its Concluding Observations of 1997 the Committee also noted with concern the adoption of the Presidential Decree *On the Activities of Lawyers and Notaries* of 3 May 1997, which gives competence to the Ministry of Justice for licensing lawyers and obliges them, in order to be able to practice, to be members of a centralized Collegium controlled by the Ministry, thus undermining the independence of lawyers. Nevertheless, this practice remains unchanged.

Access to justice

The court expenses on certain categories of cases (fees, expertise expenses) are incomparable with the income of citizens. They exceed the reasonable limits for low-income social groups (students, invalids, pensioners, unemployed, etc.) and present an obstacle to judicial recourse. A high state fee on supervisory complaints for convicts (who cannot earn such sum in prison facilities), also inhibits the access to justice. Refusals of courts to file civil cases are not infrequent, especially when claims concern state organs and officials. Some laws contain no references to the right of the court appeal against decisions of state organs, as a result of which the courts get a good excuse to deny citizens in access to justice.

No measures to restore the violated rights have been taken by the Belarusian authorities on the opinions of HRC concerning individual communications of Belarusian citizens. The authorities refer it to the absence in the national legislation of the mechanisms for realization of recommendations of the Committee.

We should also point at an extremely low percent of acquittals (no more than 0.4%). The court preserves its accusative nature. According to information of the Supreme Court, in 2008 there were 191 acquittals v. 68,530 convictions (0.28%), and in 2009 — 187 v. 62,064 (0.30[10]).

Impossibility to review verdicts of the Supreme Court (Article 14, paragraph 5 of ICCPR)

The national legislation doesn't provide for cassation review of verdicts and rulings of the Supreme Court on the cases that are considered by it as the court of primary jurisdiction. The verdicts on such cases are inured immediately after the announcement and can be reviewed only by supervisory instances, which doesn't entail the obligatory review of the enforced verdicts. Meanwhile, the Supreme Court issues verdicts about the use of the death penalty.

Individuals have no right to file individual constitutional complaints. The right to file appeals questioning the constitutionality of legal acts belongs only to empowered subjects (President, the Government, the Chambers of the National Assembly, the Supreme Court and the Supreme Economic Court). As it is clear from the practice of the recent years (2007-2009), they don't file any proposals about checking the constitutionality of normative legal acts. Meanwhile, in 2008 they received more than 60 addresses from individuals and organizations where the questions about the initiation of the constitutional legal proceedings concerning the laws that violated their rights and liberties were raised. There is no regulation of the obligation of these subjects to file proposals for checking the constitutionality of acts on demand of private individuals and organizations, as well as the judicial order of their compulsion to it.

The Plenum of the Supreme Court established that consideration of the cases concerning the validity of normative-legal acts is beyond the competence of the courts of general jurisdiction. Thereby, individuals are deprived of the opportunity to appeal against the legal acts that concern their rights and legal interests, which means that the right to judicial protection cannot be realized to the full extent.

Ban on Unlawful Interference with One's Privacy, Family, Home or Correspondence and Unlawful Attacks on One's Honor and Reputation (Article 17 of ICCPR)

Privacy invasion

Numerous cases of interference with the privacy, family, honor and reputation of public and political activists from the side of secret services and the state media are registered in Belarus. Unsanctioned videos of their homes are often used for creation of a negative image via demonstration on the state TV channels (in the evening news program *Panarama* on the 1st TV channel, etc.) The state TV also publicizes information about the state of their health, their property status and way of life. In 2009, the film *Young Front. Kidnapping* was shown at the prime-time on the 1st TV channel with the aim to denigrate the leaders of the youth organization *Young Front*.

[10] http://respublika.info/4977/south/article38484/

The forced dactilography of all citizens liable to call-up was conducted in Belarus in connection with the investigation into the criminal case concerning the explosion in Minsk in the morning of 4 July 2008. According to the Law *On the State Dactylographic Registration* that was in action till 6 January 2010, fingerprinting was obligatory only for officers of law-enforcement agencies, the military, workers of dangerous industrial enterprises and the persons who were drawn to criminal responsibility. However, in practice fingerprints were taken from all persons who were liable for call-up. Those who refused to pass this procedure were intimidated and were forcedly guarded to the appropriate institutions. On 6 January 2010, President signed the law that obliged all persons who are liable to call-up to be fingerprinted. Thus, the widely used practice received a legal basis.

Unlawful interference with correspondence

The Belarusian legislation contains an extensive array of reasons for bugging the telephone communications of private individuals. In particular, according to Articles 12-13 of the Law *On Investigation and Search Operations*, it is possible even without instigation of a criminal case if the investigation possesses information about events or actions that present danger to the state security of the Republic of Belarus. Such a situation results in abuses from the side of law-enforcement agencies: they can bug private communications, including the talks of public and political activists referring to information about events or actions that threaten the state security of the Republic of Belarus.

Unlawful interference with home

Article 201 of CPC lets officers of law-enforcement agencies penetrate the houses and other private premises of citizens without presenting a prosecutor's warrant and bringing witnesses. In practice, the law-enforcement agencies use this possibility to search the apartments of public and political activists and offices of public organizations and opposition political parties under the pretext of crime investigation.

Such searches are often conducted on the eve of election campaigns and peaceful protest actions. For instance, in the evening of 13 February 2009 the police confiscated posters and leaflets for the St.Valentine's Day, 14 February, from the apartment of an activist of the *Young Front*, Katsiaryna Halitskaya, without presenting a search warrant and introducing themselves. On the eve of the presidential election 2006, the police searched the private premises of the local public activist Ivan Kruk, saying his son was charged with robbery. The policemen allegedly came to Mr. Kruk's place to look for the masks in which the robbery had been committed. However, instead they showed interest to Kruk's computer and the printed production that was found in the flat. On 2 March 2006, in the high gear of the election campaign, searches were conducted in the apartments of Siarhei Liashkevich and other democratic activists of the Shchuchyn district. As a result, the police confiscated information carriers, printed editions and personal documents.

Right to Freedom of Thought, Conscience and Religion (Article 18 of ICCPR)

The equality of all religions and confessions is guaranteed by the Constitution (Article 16, part 1). However, Article 16, part 2 reads that 'the relations of the state and religious organizations are regulated by the law with regard to their influence on the formation of the cultural and state traditions of the Belarusian people'. The criteria of such influence are not determined, which results in the discriminative attitude of the Belarusian authorities to different religions. This attitude is also present in the new edition of the Law *On Freedom of Conscience and on Religious Organizations*. The law enumerates the five confessions that are considered as connected with the history of Belarus: the Orthodox Christianity, the Catholic Christianity, the Lutheran Christianity, Islam and Judaism. All others are interpreted as alien to the Belarusian people.

Activity of religious organizations

The activity of unregistered religious organizations is banned under the pain of administrative and criminal punishment (Article 9.9 of CoAOand Article 193.1 of CC respectively). Since 2001,

believers of different confessions have been drawn to administrative punishment for ‘creation and administration of a religious organization without registering its charter according to the established order’, whereas the law establishes excessive demands for registration of religious organizations, including the requirement to have at least 20 members.

On 9 April 2009 the police burst into a private apartment in the town of Shklou (the Mahiliou region), where an annual holiday of Jehovah’s Witnesses was taking place. Despite the absence of a warrant, they started searching the apartment and taking photographs of participants of the event. They composed a report of administrative violation under Article 9.9 of CoAO (‘the establishment or administration of a religious organization without the state registration according to the established order) against one of the believers, Andrei Varaksa. As a result, Mr. Varaksa was fined by the Shklou District Court. The same day, the police conducted a search in a private house in the town of Barysau (the Minsk region). As a result, a report under Article 9.9, part 1 of CoAO was composed against its owner, Andrei Kuzin.

On 26 July 2009 officers of the police and the Kastsiukovichy District Executive Committee burst into a private house in the town of Kastsiukovichy (the Mahiliou region) during a religious meeting of Jehovah’s Witnesses. The organ of inquiry held a check-up on the fact of the meeting for three months, seeking to instigate a criminal case. Though no case was instigated, in December 2009 the Kastsiukovichy District Court found Ivan Mustetsana, Aliaksei Ilnitski and Siarhei Yaustafyeu guilty under Article 9.9, part 1 of CoAO and punished them with fines.

In August 2009, the Chairperson of the religious organization of Jehovah’s Witnesses in Homel, Yury Rashetnikau, was fined 1,050,000 rubles (about $350) for holding a religious assembly in a non-temple building (Article 23.34 of CoAO). In September 2009, the owner of the building, Stsiapan Luhouski, was fined 700,000 rubles (about $230) for the accommodation of the meeting (Article 21.16 of CoAO, ‘violation of the rules of use of dwelling houses’). Moreover, the Mahiliou community of Jehovah’s Witnesses was served with a warning on this fact.

In June-August 2009 the Minsk Procuracy investigated a criminal case against Yauhen Volkau, a representative of the *Unity Movement* (Moon’s Church). This was the first instance of criminal persecution of a religious organization under Article 193.1 of CC. However, the criminal case got no progress and was dropped on 18 August 2009 because of the absence of corpus delicti.

According to the Law *On Freedom of Conscience and on Religious Organizations*, the religious organizations of Belarus are divided into communities and associations. Religious associations can be established by at least ten religious communities of the same confession, one of which has acted on the territory of Belarus for at least 20 years. Only religious associations are entitled to establish their own mass media, educational establishments, educate priests and invite foreign priests. This limits the possibilities of representatives of the religious directions that have started their activities in Belarus recently.

Religious communities have the right to act only on the territory of the settlement where they possess an official registration. Members of religious organizations have no right to impart their religious convictions or conduct any other religious activities (profess, distribute literary editions, hold divine masses, etc.) outside the settlements where they are registered. In fact, any missionary activities are banned to religious organizations. Many of them consider it as inacceptable and incompatible with their religious views, which leads to conflicts with the authorities.

The activities of religious organizations in non-temple buildings can be conducted only on permission of the authorities. It is extremely difficult to obtain such permission, that’s why the religious organizations have to violate this legal norm and are punished for it.

The story of the Minsk Protestant Church *New Life* is especially famous. In 2000, the authorities cancelled the agreement according to which the Protestant community rented premises for religious needs. The community was unable to rent another premises as the authorities created many obstacles to it. That’s why in 2002 the believers bought a former cowshed near Minsk and reconstructed it into a temple. The community spent several years trying to obtain the official permission for serving masses in this building. Despite the absence of such permission, masses were served, for which the administration of the religious community was repeatedly subject to fines. Starting from 2005, the Minsk City Executive Committee tried to deprive the community of its building. In 2006 the believers went on a steadfast of protest, after which they were left alone for some time. The attempts to confiscate the buildings were renewed in the spring and summer of 2009. On 7 October 2009, the

Minsk City Economic Court granted the demands of the Maskouski District of Minsk Housing and Utilities Administration concerning the eviction of the church from the building. The cassation appeal against this verdict was dismissed by the Supreme Economic Court on 8 December 2009.

Piatro Malanachkin, a pastor from the town of Horki (the Mahiliou region), was sentenced to a fine for regularly putting a stand with religious literature near his house, which the court held to be a violation of the urban maintenance rules.

26 religious confessions have been officially registered in Belarus since the beginning of 1990ies. Despite numerous attempts to register with the state, not a single confession has been registered since the adoption of the Law *On Freedom of Conscience and on Religious Organizations*.

Obstacles to the activity of foreign priests

The activity of foreign religious activists is complicated in Belarus. Cases of groundless refusals in extension of visa to foreign citizens and their deportation in connection with religious activities were still registered in Belarus in 2008-2009. In May 2008, visas weren't extended to the spouses Egbert and Anita Schoone, citizens of Germany who have dealt with the Christian rehabilitation of drug addicts in Belarus since 1997 and established a Recovery Center in the Svetlahorsk district (the Homel region) that holds the 1st place in Belarus on the popularity of hard drugs among the youth.

In October 2008, the Protestant bishop Veniamin Brukh, a citizen of the Ukraine, the founder of the Minsk Full Gospel community *Jesus Christ Church* and its pastor throughout 1991-2002, was banned entry to Belarus and subsequently deported from the country. The official reasons for the deportation and the term of the entry ban remain unknown.

In December 2008, the permission for religious activities wasn't prolonged to the Catholic priest Zbigniew Grygorcewicz, one of the main organizers of the festival of Christian music in Barysau that had been banned by the local authorities right before its beginning. Following these events, the Polish priest openly criticized the Barysau authorities for it.

In February 2009, the Belarusian authorities deported two citizens of Denmark, one of whom had spent many years assisting the implementation of various humanitarian projects for citizens of Homel and the Homel region, the part of Belarus that suffered most as a result of the Chernobyl accident. The main reason for the deportation was the participation of the Danish citizens in a mass in a Protestant church in Homel, with which they had long-standing friendly relations.

Realization of the right to alternative civil service

In its Concluding Observations of 1997 HRC recommended that a law exempting conscientious objectors from compulsory military service and providing for alternative civil service of equivalent length be passed at an early date in compliance with article 18 of the Covenant and the Committee's General Comment. Despite this, the law on alternative civil service still hasn't been passed. Moreover, conscientious objectors are drawn to criminal responsibility for 'evasion from military service'.

On 6 November 2009, the Tsentralny District Court of Minsk found Dzimitry Smyk, a consecrated and baptized Jehovah's witness, guilty of evasion from the draft and fined him 3,5 mln rubles (about $1,500). Dz. Smyk referred to Article 57 of the Constitution that guaranteed the right to alternative service. However, he was denied this right due to the absence of the law on alternative service. BHC prepared an expert conclusion about the practice of criminal persecution of the persons who were unable to serve in the army because of their religious convictions and presented it to the court of review. In this conclusion, the BHC lawyers referred to the Ruling of the Constitutional Court of 2000 reading that 'according to the Constitution and the Law *On the Universal Conscription and Military Service* (Articles 1 and 14), citizens of the Republic of Belarus have the right to replacement of military service with alternative civil service because of their religious convictions, which must be provided with an effective mechanism of its realization'. Therefore, the Constitutional Court considered that the law on alternative civil service was to be urgently passed or the necessary amendments and supplements were to be introduced in the Law of the *On the Universal Conscription and Military Service* with the aim to determine the mechanism of realization of the right to alternative civilian service. Despite this, the court of review and the supervisory instance left the sentence standing. A protest against the verdict was entered only after the application of BHC to the Supreme Court. On 15 March 2010 the protest was granted by the Presidium of the Homel Region Court and the case was passed for review.

On 1 February 2010 the Minsk District Court sentenced Ivan Mikhailau, a parishioner of the Jewish-messianic community *New Testament*, to three months of arrest. Mr. Mikhailau also asked to be assigned to alternative service because of his religious views and referred to the guarantees provided by Article 57 of the Constitution. On 9 March 2010, the panel of judges of the Minsk Region Court abolished the verdict of the Minsk District Court and returned the case for review. The panel of justice also ruled that Mikhailau was to be released under a written undertaking not to leave the city.

Right to Freedom of Expression (Article 19 of ICCPR)[11]

Certain norms of the national legislation and the practice of their application contradict to provisions of Article 19, paragraph 1 of ICCPR. CC envisages criminal responsibility for defamation and insult of President, state officials, judges and 'discredit of the Republic of Belarus'. The aforementioned articles have been repeatedly used in practice.

A new Law *On Mass Media* inured in February 2009. In particular, the law provided regulation of the activities of internet media by rulings of the government and re-registration of the existing media, simplified the procedure of closing a media and decreased the level of protection of journalists and editorial boards. The excessive powers of the Ministry of Information to apply sanctions were further increased.

Obstacles to the professional activities of journalists and media

Liquidation of a media by court is possible in the case of a single gross violation of the law or after two warnings for any violations, including most insignificant ones. The Belarusian authorities hinder the activities of journalists for foreign media. Prosecutorial workers and KGB officers have often issued such journalists with official warnings referring to Article 35, paragraph 4 of the Law *On Mass Media* that bans activities of journalists for foreign media without accreditation. At the same time, the Ministry of Foreign Affairs several times refused to accredit foreign journalists without any legal grounds.

On 16-17 November 2009, the Ministry of Information issued official warnings to the private newspapers *Va-bank*, *Nasha Niva*, *Narodnaya Volia* and *Komsomolskaya Pravda v Belorussii* for alleged violations of the Law *On Mass Media*. *Narodnaya Volia* was warned for a publication that allegedly contained calls to extremism and counteraction to activities of the Central commission on elections and holding of republican referenda (further referred to as CEC).

The authorities create obstacles to distribution of the non-state press. The state monopolists in the sphere of retail and subscription to mass media, *Belsayuzdruk* and *Belposhta*, refuse to distribute almost a half of the registered private socio-political editions, whereas the Belarusian courts refuse to consider the appropriate claims of the editorial boards. The police detain distributors of registered and unregistered editions and confiscate the circulations of newspapers and leaflets. Such production was most actively confiscated by the police and KGB during election campaigns.

On 9 July and 30 September 2009, during the opposition's actions *Public Information Day*, the police detained opposition activists and confiscated from them the newspapers *Novy Chas* and *Tovarishch* with the aim to prevent the distribution of these editions. No confiscation reports were composed. Such practice is regularly used towards independent distributors. On 9 October 2009, the police detained the Russian nuclear physicist Andrey Ozharovsky in the town of Astravets (the Hrodna region) and confiscated from him critical materials concerning the project of the Belarusian nuclear power station. Moreover, Ozharovsky was sentenced to 7 days of arrest on charges in 'disorderly conduct'.

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[11] Persecution of the press in the Republic of Belarus. Recommendation 1658 (2004) of the Parliamentary Assembly of the Council of Europe
Political situation and independence of the media in Belarus. European Parliament Resolution P6_TA(2005)0295.
Situation in Belarus. Resolution 1671 (2009) of the Parliamentary Assembly of the Council of Europe.
Situation in Belarus. Recommendation 1874 (2009) of the Parliamentary Assembly of the Council of Europe.

The accessibility of information inside the country decreased. The recently adopted legal acts (for instance, the amendments to the Law *On Government Service*) seek to restrict the dissemination of free information. In many regions of the country, state officials refuse to provide the media with information without the consent of the local ideological workers. The denial of accreditation to journalists is one of the means to restrict the access to information.

Officers of law-enforcement agencies often hinder the professional activities of journalists during mass events, including with the use of physical force. The cases concerning crimes against journalists including killings and disappearances haven't been detected for a long time.

The use of the counter-extremism legislation against mass media

The Law *On Counteraction to Extremism* (passed in 2007), has a negative impact on freedom of expression in the Republic of Belarus. The law contains quite blurred notions of 'extremism' and 'extremist activities', which allows abuses in its practical application. The criminal cases with the use of the Law *On Counteraction to Extremism* are initiated by KGB.

The newspaper *Svaboda*, some copies of which were confiscated by the police during the transportation in the Iuye district of the Hrodna region in August 2008, became the first victim of the Law *On Counteraction to Extremism*. In September 2008, the Iuye District Court declared extremist one of the issues of the newspaper. Later this verdict was reversed on formal grounds by the Hrodna Region Court.

In autumn 2008, the Kastrychnitski District Court of Hrodna ruled that the CDs with the movie *A Lesson in Belarusian*, photos from the protest actions following the presidential election 2006 and recording of the concert *Solidary with Belarus* (held in Warsaw on 12 March 2006) that had been confiscated from a journalist were extremist and liable to destruction.

In October 2008, officers of the Brest customs confiscated 10 copies of the literary-fiction magazine *ARCHE-Pachatak* that were transported by members of its editorial board for their Polish colleagues and libraries. The customs officers suspected that the information that was presented in the edition could harm the state and national interests of Belarus and submitted the magazines for expertise. The Brest Region KGB Department stated that this issue of the magazine was extremis and contained information that discredited the activity of the state power organs of Belarus. On 25 February 2009, this assessment was upheld by the Maskouski District Court of Brest that declared the copies of magazine extremist and liable to destruction. On 7 May 2009 this verdict was reversed by the panel of judges of the Hrodna Region Court. In June 2009, the Brest Region KGB Department revoked the lawsuit. Bear in mind that the OSCE Representative on Freedom of the Media filed an inquiry with the Ministry of Foreign Affairs of Belarus concerning the case of *ARCHE-Pachatak*. This question was also raised before the Belarusian authorities by diplomats of the EU countries in Belarus.

Eventually, such cases were dropped because of the public pressure.

Freedom of Peaceful Assembly (Article 21 of ICCPR)[12]

Complicated rules for holding peaceful assemblies (legal restrictions of freedom of peaceful assembly)

The Belarusian legislation considerably restricts and excessively controls the holding of peaceful assemblies. Article 35 of the Constitution that guarantees freedom of peaceful assembly doesn't contain and doesn't determine the admissible level of restriction of freedom of peaceful assemblies that is determined by Article 21 of ICCPR. In particular, Article 35 of the Constitution guarantees freedom of peaceful assemblies that don't violate the public order and the rights of other citizens. The order of holding mass actions is determined by the Law *On Mass Events* (edition #233-3 of 7 August 2003). Article 10 of the Law *On Mass Events* bans the mass actions that are aimed at forced

[12] Situation in Belarus on the eve of the presidential elections. Resolution 1482 (2006) of the Parliamentary Assembly of the Council of Europe.
The expert conclusion of the Belarusian Helsinki Committee on the *Process of 14*. http://www.belhelcom.org/?q=node/2075

change of the state system, propaganda of war, social, national, religious or racial enmity. According to Article 12 of the Law, one of the grounds for cessation of an assembly can be danger to the life and health of citizens.

The complication and duration of the procedure of authorization, the wide powers of the local authorities to determine the places that are banned for holding peaceful assemblies, the place and the time of such actions often result in arbitrary denial of the right to hold peaceful assemblies in the absence of the grounds that are specified in Articles 10 and 12 of the Law *On Mass Actions*. Article 9 of the Law *On Mass Actions* empowers the local executive authorities to determine stable places for holding mass events as well as the places where mass events are banned, without providing any reasons. As a result, the executive committees of the majority of Belarusian towns and cities issued the rulings that ban any mass actions on the central streets and squares, with the exception of the events that are organized on decision of state organs. Unfrequented parks, stadiums and squares located at a considerable distance from the town centers are determined as regular places for other mass actions.

Article 5 of the Law *On Mass Events* obliges the organizers of mass actions to specify in their applications the measures for securing the public order, providing the necessary medical services and cleaning of the territory after the action. Article 6 of the Law also empowers the local executive authorities to determine the order of payment for the expenses on securing the public order, medical services and cleaning of the territory after the mass event. The local executive authorities of most towns and citizens of Belarus adopted the rulings according to which organizers of mass actions must conclude the agreements with the police, medical institutions and public utilities and pay for their services connected with the mass actions within ten days after holding the mass action (Article 10 of the Law). The failure to comply with these demands serves as a ground to ban the assembly (Article 6 of the Law). Moreover, the organizers are materially responsible for any harm that can be inflicted to the state, citizens and organizations by participants of the mass event.

Such situation can be used for economical persecution of organizers of mass events. For instance, a number of Minsk enterprises applied to the Savetski District Court of Minsk with financial claims against the organizers of the European March of 14 October 2007, Ya.Afnahel, Dz.Fedaruk, A.Liabedzka, V.Ivashkevich, A.Milinkevich and V.Viachorka. The plaintiffs staetd that as a result of a digression from the action route that was determined by the Minsk City Executive Committee, the action participants littered the streets, trampled lawns, etc. The total sum of the claims amounted to 10 mln rubles (more than $5,000). All claims were fully granted and the requested sum was exacted from the action organizers through court.

The restrictions to peaceful assemblies that are established by the national legislation ignore the principle of ‘necessity’ that is established in Article 21 of ICCPR.

Forced dispersal of peaceful assemblies and punishment of their participants

Practically all peaceful assemblies that weren’t sanctions by the authorities were disbanded by law-enforcement agencies and ended with mass detentions of their participants with the use of physical force and police gear. All this was motivated by the absence of the permission of the local authorities for holding of the action, the holding of which in such circumstances was considered as a violation of the public order. Participation in an unauthorized mass action is a violation penalized by Article 23.34 of CoAO that envisages up to 15 days of arrest.

Physical violence and police gear (truncheons, gas, etc.) are often used towards participants of peaceful assemblies. As a rule, the use of physical force in such cases is excessive and disproportional.

The peaceful assemblies on 25 March, the day of the proclamation of the Belarusian People’s Republic in 1918, traditionally end with detentions.

On 25 March 2006, a group of peaceful demonstrators was assaulted by the special mission units of MIA. Police gear including gas grenades were used during the dispersal of the action. The use of the police gear and physical violence was evidently disproportional. The former presidential candidate Aliaksandr Kazulin was detained during the action. Following these events, on 13 July 2006 the Maskouski District Court sentenced him to 5.5 years of imprisonment under Article 342 of CC. A total of 736 persons received administrative punishments (arrests) on 20-25 March 2006.

On 25 March 2007, the police detained 39 persons during the dispersal of the traditional peaceful action. 55 persons were preventively detained on the eve of the action. 30 of them were sentenced to administrative arrest for ‘using obscene language in public’.

26 persons were detained during the dispersal of the peaceful action on 25 March 200 and about 50 were sentence to huge fines. Many demonstrators were beating during the dispersal of the demonstration and after their detention.

The traditional actions in the memory of the missing Belarusian politicians that are held on the 16th of each month are usually dispersed by the riot police in about 10-20 minutes after their beginning. The police often beat the participants of such actions during the detention and after it.

In some cases, participants and organizers of peaceful actions were subject to criminal punishment under Article 342, ‘organization of or active participation in the group actions that rudely violate the public order’.

The peaceful actions of protest that were held by entrepreneurs on 10 and 21 January were accompanied with detentions as well. 25 persons received administrative punishments for participation in the first of them, 23 of them were sentenced to different terms of arrest. 25 persons were detained on 21 January. Seven of them were sentenced to arrest. A criminal case under Article 342 of CC (known as the *Process of 14*) was instigated on the events of 10 January against the youth activists A.Bondar, A.Charnyshou, A.Dubski, M.Kryvau, M.Pashkevich, A.Straltsou, M.Subach, T.Tsishkevich and P.Vinahradau (all of whom were sentenced to 2 years of personal restraint without direction to open penitentiary institutions), A.Barazenka (sentenced to 1 year of personal restraint without direction to an open penitentiary institution), M.Dashuk (under age, sentenced to 1.5 years of persons restraint without direction to an open penitentiary institution), V.Siarheyeu and A.Koipish (fined about $1,150 each) and A.Kim (sentenced to 1.5 years of imprisonment in the aggregate with charges on Article 364 of CC).

In 2005, the Belarusian political leaders M.Statkevich and P.Seviarynets were sentenced to two years of personal restraint with direction to open penitentiary institutions. One more political leader, A.Klimau, was sentenced to 1.5 years of personal restraint with direction to an open penitentiary institution.

Bear in mind that Belarus hasn’t undertaken any adequate measures to implement the Concluding Observations of 1997. All restrictions that were mentioned in this document are still in action. In particular, Article 11 of the Law *On Mass Events* bans the use during mass actions of any steamers and flags that weren’t registered according to the established order, as well as the emblems, symbols, posters and transparencies whose content is aimed at subversion of the state system and violation of the public order. This article also requires filing applications for authorization of mass actins at least 15 days before their beginning.

Right to Freedom of Association (Article 22 of ICCPR)

Complicated order of registration of public associations

The national legislation provides a complex order of registration of public associations including political parties and trade unions. The registration of commercial associations requires minimal efforts and takes several days, whereas the registration of public associations requires the preparation of numerous documents and takes more than a month. The grounds for denial in registration that are set forth in the legislation provide for the possibility of arbitrary registration denial. Certain associations have faced regular denials in registration for many years already.

According to Article 15 of the Law *On Pubic Associations* of 4 October 1994 (quoted in the edition #36-3 of 19 July 2005), the legal reasons for the non-registration of public associations by the registering organ (the Ministry of Justice and its regional departments) are: incorrigible violations of the established order of creation of the public association or union; unconformity of the documents of the public association or union to the legal requirements; presentation by the public association or union of other documents and/or information that don’t comply with the legal requirements, including counterfeit, forged or invalid documents; non-compliance of the name of the public association or union (including the shortened name), its symbols and the conditions of membership with the legal requirements and/or their constituent instruments; the failure to eliminate within one reason for month of the

violations that served as the reason for suspension of the state registration of the public association or union.

The appropriate registering organ can suspend the registration of the public association or union for up to one months to give it the opportunity to eliminate the admitted violations in the case they are corrigible. However, such suspension is a right, not an obligation of the registering organ and can be applied arbitrary. Thus, even the most insignificant mistakes in the registration documents (a wrong place of work of one of the founders, or mistakes in their surnames) the result in registration denial. Such requirements to registration and the procedure of denial or suspension of registration are also established by the Law *On Political Parties* of 5 October 1994 (in edition #35-3 of 19 July 2005).

The restrictions on the establishment of public associations and political parties that are established in the national legislation don't correlate with the restrictions of freedom of associations that are set forth in Article 22, part 2 of ICCPR.

A registration denial can be appealed at court, but courts haven't granted a single complaint on this matter so far.

Not a single party has been registered with the state since 2000. Many parties were denied registration. The Party of Freedom and Progress was denied registration four times during 2003-2009, whereas the Belarusian Party of Workers and the Party of Belarusian Christian Democracy faced registration denials in 2009 (the latter received two denials).

The number of the registered public associations is about 2,250 and has remained stable throughout 2002-2009. Registration denials are issued to numerous youth and human rights groups. For instance, in 2009 four registration denials were issued to the Human Rights Association *Brestskaya Viasna*, in 2007-2009 three denials were received by the Public Human Rights Association *Nasha Viasna*. Among those who were denied registration with the state there are also the Belarusian Assembly of Pro-democratic NGOs, the Youth Public Association *Young Social-Democrats — Young Hramada*, the Youth Public Association *Modes*, the Public Association *Youth Christian-Social Union*, the Public Association *Spadchyna*, etc.

Meanwhile, such denials are issued mainly because of insignificant mistakes in the constituent instruments or pretensions of the registering organ to the names of the organizations (the cases of the Public Human Rights Association *Nasha Viasna* and the Belarusian Assembly of Pro-democratic NGOs) and have nothing to do with the restrictions that are established by Article 22 of ICCPR.

The necessity to have an office in a non-dwelling building is a serious obstacle to the registration of local and republican public associations. At present, a public association cannot be registered with the legal address located in a private apartment of one of its founders.

The Belarusian authorities don't implement the opinions of HRC according to which the denials of registration and the dissolution of public associations violate Article 22 of ICCPR. At present, there are three decisions on Article 22 against Belarus: concerning the registration denial to the Human Rights Public Association *Helsinki-XXI*[13] and the court verdicts on the dissolution of the Homel Public Associatioin *Civil Initiatives*[14] and the Human Rights Center *Viasna*[15]. The numerous appeals to courts and other organs with the aim to make the Belarusian authorities execute these decisions were fruitless, as a result of which these organization continue acting without the state registration and face the risk of criminal persecution.

Harassment of unregistered public associations

The activity of unregistered public associations, parties and religious associations has been banned since 1999 and the criminal responsibility for it was introduced in 2005. Article 193.1 of the Criminal Code envisages up to two years of imprisonment for participation in activities of an unregistered public or religious association, party or fund regardless of the aims and content of such activities. At least 17 persons were convicted on this article in 2006-2009, most of whom were members of the election monitoring initiative *Partnership* and the unregistered youth organization *Young Front*. Five of them were sentenced to 6-18 months of imprisonment. Many unregistered organi-

[13] CCPR/C/88/D/1039/2001
[14] CCPR/C/88/D/1274/2004
[15] CCPR/C/90/D/1296/2004

zations were issued with warnings with the demand to decrease their activity for fear of criminal persecution (the Union of Poles in Belarus, the Belarusian Student Association, the association *For Clean Barysau*, etc.). Taking into account the practical impossibility to register any association that is undesirable for the authorities, Article 193.1 voids the possibility to realize freedom of association.

Unregistered trade unions face serious problems including the ban on the activity of unregistered organizations, obstacles to registration (a complicated procedure of registration, the obligation to have a legal address in the absence of the possibility to register the organization on the address of its Chairperson, high office rent, restrictions to the establishment of trade unions at enterprises, institutions, organizations and other places of work and study). Moreover, members of independent trade unions are pressurized by the employers with the use of discriminative measures, the most widespread of which are refusals to extend the labor contracts and dismissals due to their expiry (according to the law, labor contracts are concluded for 1-5 years and the employer doesn't need to explain the reasons for the refusal to extend a contract).

Repression of public associations

In 2003-2005, a campaign on the dissolution of public associations through courts was held. As a rule, the associations were subject to trials for insignificant reasons (such as violations in the execution of blanks). In 2003 the authorities liquidated 51 associations, in 2004 — 38 and in 2005 — 68. Among the NGOs that were liquidated through courts there are the Human Rights Center *Viasna*, the Independent Institute for Socio-Economic and Political Studies, the Public Association *Legal Assistance to Population*, the Independent Society for Legal Research and tens of human rights, youth, social and research associations. A number of parties were dissolved as well: in 2004 — the Belarusian Labor Party, in 2007 — the Belarusian Ecological Party and the Women's Party *Nadzeya*. Meanwhile, the majority of the liquidated associations continued their activities despite the danger of criminal punishment and the registration denials from the side of the state organs.

The Belarusian authorities interfere with activities of the Union of Poles in Belarus, organization of the Polish national minority. In 2005, Anzelika Borys was elected Chairperson of the organization. The Ministry of Justice didn't recognize the results of the appropriate assembly of the Union of Poles and stated that they didn't correspond to the organization charter and the existing legislation. Later, a new assembly was held under the control of the local executive authorities, which resulted in a split of the public association, after which the organization members that didn't put up with the state interference in its activity started acting on behalf of the unrecognized Union of Poles in Belarus with Anzelika Borys at the head. They are subject to regular harassment for exercising their right to association, including administrative arrests, threats and criminal persecution.

The Republic of Belarus didn't take adequate measures to implement the Concluding Observations of 1997 with regard to freedom of association. The situation in this sphere continued deteriorating.

Equality before Law and Ban on Discrimination (Article 26 of ICCPR)

While adverse discrimination is banned by the Constitution and other legal act, the notion of adverse discrimination is absent in them. The possible grounds for discrimination are enumerated only in the Labor Code. The practice of considering cases of adverse discrimination hasn't shaped yet, as far as the courts refuse to consider it as a subject of application and study the law-enforcement practice on analogical cases, making it impossible to prove the adverse discrimination in concrete cases.

Gender discrimination

The existing problem of homophobia is concealed by the state media, some of which have resorted to publishing homophobic and discriminative articles. The state authorities ban homosexuals from holding street actions without providing any reasons.

Language discrimination

There are two state languages in Belarus, Belarusian and Russian, whose equality is enshrined in the Constitution. However, the practical adverse discrimination of the Belarusian-language minority is observed.

There are no Belarusian-language editions of the overwhelming majority of legal acts including the codes. The Law of the Republic of Belarus *On Languages* (edition #187-3 of 13 July 1998) doesn't guarantee the equality of the two state languages. In particular, Article 3 of the law doesn't oblige the state officials to give answers on the merits of citizens' applications on the language of inquiry. The same applies for the language of legal proceedings: according to the existing national legislation they can be conducted either in Belarusian or Russian. As a result, practically all trials with participation of the Belarusian-language minority are conducted in Russian.

The adverse discrimination of Belarusian-speaking soldiers in the army is evident: the officers don't have enough command of the Belarusian language and publicly express their disregard for it. Soldiers are subject to disciplinary punishments for giving commands in Belarusian.

There is no succession in the Belarusian-language education in the country and it is almost impossible to receive a higher education in the Belarusian language on the overwhelming majority of specialities. The administration of higher educational establishments doesn't organize Belarusian-language groups to meet the wishes of the students who want to study in the Belarusian language. There are no Belarusian-language TV channels in Belarus and the majority of the existing programs of the state TV and radio is in Russian.

Discrimination for political and other convictions

The discrimination of citizens on the basis of their political convictions acquired a special significance in Belarus. The persons who express opposition views are subject to repressions including the arbitrary application of the contract system of employment (dismissal from work), expulsion from higher educational establishments, arbitrary detentions on the eve of mass events and large political campaigns, obstacles in running at elections, restrictions of freedom of association and peaceful assembly and drafting into the army with violations of the necessary procedures.

A great publicity was given to the case of the expulsion of Tatsiana Shaputska, the press-secretary of the *Young Front*, from the second year of the juridical faculty of Belarusian State University (BSU). Ms. Shaputska was invited by the European Commission to take part in the Forum of the Eastern Partnership in Brussels on 16-17 November 2009, and had to miss several days of classes for this reason. On 2 December 2009 Tatsiana Shaputska was expelled from the university on a rector's order, allegedly because she had missed many classes during the semester. The student is of the opinion that certain process norms were violated during her expulsion, and the graveness of her misdeed (22 hours of missed classes) didn't correspond to the imposed disciplinary punishment. On 9 January 2010 the BSU rector, S.Ablameika, didn't grant the complaint of T.Shaputska of 28 December 2009.

The authorities apply foreign travel restrictions towards public and political activists and control their movement. On 1 January 2008 Anatol Liabedzka, Chairperson of the United Civil Party, received from the Tsentralny District Police Department of Minsk a notice about the ban to leave the country connected with the instigation of a criminal case under Article 376, part 2, 'defamation of President of Belarus' by the Minsk City Procuracy. Mr. Liabedzka also received a letter from the procuracy, by which he was informed that he was a suspect on the criminal case. However, no restraint was determined for him and no official charges were issued. Though the case was dropped on 6 February 2009, the politician still faces difficulties while going abroad. The border guards regularly search the car of Mr.Liabedzka and force him to pass personal examination. A similar attitude is typical for other well-known politicians who cross the Belarusian border. The *Young Front* activist Nasta Palazhanka wasn't let abroad several times because a criminal case was allegedly instigated against her. However, when Ms. Palazhanka filed a written inquiry with MIA, she was informed that it was a 'mistake'.

Tens of activists of oppositional structures and human rights defenders are subject to control of their movement: the border guards have special lists of political activists whose departure and return they must watch. Such persons are often searched on the border. In particular, starting from 2008 the representatives of the Human Rights Center *Viasna* Ales Bialiatski, Uladzimir Labkovich and

Valiantsin Stefanovich were subject to rummage (including the search of their transport and personal belongings) during each crossing of the state border of Belarus. The BHC Chairperson Aleh Hulak, the Chairperson of the Belarusian Association of Journalists Zhana Litvina, the leader of the Congress of Independent Trade Union Aliaksandr Yarashuk and other persons used to be subject to such form of control for quite a long time as well.

The authorities failed to present any legal grounds for such control despite the numerous requests to explain the reasons for these actions.

Discrimination on other grounds

The adverse discrimination on the state of physical and psychical health exists in Belarus. The state policy is directed rather on singling out the disabled persons into a separate group than on their social integration. One of the traits of such discrimination is the separate education of handicapped and healthy children. The state considers such position as economically grounded, as the joint education of handicapped and healthy children requires the creation of special conditions. However, in this case the parents cannot realize their right to choose the form of education for their children.

The authorities don't take enough efforts to create a barrier-free environment in the settlements, which especially concerns wheel-chair invalids. The state program on creation of the barrier-free environment should be noted as a positive step, but is nevertheless insufficient.

In Mary 2009 Siarhei Drazdouski, Chairperson of the Republican Association of Wheelchair Invalids, lodged a claim with the court concerning the actions of a guard of the National Theater of Opera and Ballet which he considered as adverse discrimination. On 12 March S.Drazdouski and Uladzimir Patapenka were unable to get into the theater because of the violation of the building norms during its reconstruction, i.e. non-abidance by the norms of barrier-free environment. The attempt to clear the situation ended with a conflict. The theater guard blocked their way and didn't let them even to the foyer of the office porch. On 29 May 2009, the Frunzenski District Court of Minsk didn't grant the claim for compensation of the moral harm inflicted to the wheelchair invalid by the actions of the guard. The court stated that the Civil Code of the Republic of Belarus contained a strict and exhaustive enumeration of the grounds on which one could demand compensation of moral harm, and the adverse discrimination invalids wasn't listed there.

Recommendations:

1. to activate the cooperation with the UN Human Rights Committee and timely present the reports on implementation by the Republic of Belarus of the International Covenant on Civil and Political Rights; to take measures for the implementation of the opinions of HRC on individual communications of citizens of Belarus;
2. to introduce a moratorium on the death penalty; to ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights and take measures for the elimination of the death penalty from the penal system;
3. to present a legal notion of discrimination; to provide an effective access to the judicial means to defend the victims of discrimination;
4. to abstain from the adverse discrimination of any person or group of persons, including for political and other reasons, sex or sexual orientation; to ensure the proper investigation into each case of adverse discrimination;
5. to complete the investigation into the cases of disappearance of political activists and journalists: V.Hanchar, A.Krasouski, Yu.Zakharanka and Dz.Zavadski;
6. to put the procedure of custodial placement in line with the international standards; to pass to the court organs all powers on sanctioning the custodial placement, excluding the possibility of applying a restraint on the sole grounds of graveness of a crime;
7. to liquidate the system of activity therapy centers and eliminate the personal restraint and isolation of persons in the cases not connected to commitment of crimes;
8. to stop the practice of arbitrary detentions of citizens for political reasons and take effective measures for investigating the cases of unlawful detention;
9. to implement the notion of torture in the national legislation and continue the efforts to combat torture and inhuman treatment;
10. to activate the efforts to reform the penitentiary system and ensure the minimal standard rules of treatment of convicts including the compliance of the prison regime with the international standards in the sphere of human rights;
11. to ensure the right to religious confession and invitation of foreign priests;
12. to eliminate the cases of criminal punishment of conscientious objectors to military services and adopt a law on alternative civil service;
13. to ensure freedom of the national and international media; to take measures for increasing the accessibility of information, return all private socio-political editions to the system of the state monopolists in the distribution of printed editions and simplify the order of opening correspondent stations of foreign media in Belarus;
14. to eliminate the criminal responsibility for the defamation of high-rank state officials and discredit of the state; to abstain from violating the right to receive and impart information on the basis of the Law *On Counteraction to Extremism*;
15. to put the national legislation in line with the international standards in the sphere of freedom of peaceful assembly; to simplify the procedure of authorization of peaceful assemblies and eliminate the groundless restrictions with regard to their place, time and order, as well as the obligation of the organizers to pay the expenses for securing the public order and safety and cleaning the territory;
16. to abolish the ban on the activity of unregistered public organizations and simplify the procedure of their registration with the state.

List of Abbreviations

ATC — activity therapy center

BAJ — the public association *Belarusian Association of Journalists*

BSU — Belarusian State University

BDIHR OSCE — The Bureau of Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe

BCD — the Party of the Belarusian Christian Democracy

BHC — the Belarusian republican human rights public association *Belarusian Helsinki committee*

CC — the Criminal Code of the Republic of Belarus

CEC — the Central Commission of the Republic of Belarus on elections and holding republican referenda

CoAO — the Code of Administrative Offences of the Republic of Belarus

CPC — the Criminal Process Code of the Republic of Belarus

CES — criminal-executive system

DPD — district police department

HRC — the UN Human Rights Committee

ICCPR — the International Covenant on Civil and Political Rights

KGB — the State Security Committee of the Republic of Belarus

MIA — the Ministry of Internal Affairs of the Republic of Belarus

NGO — non-governmental organization

UNO — the United Nations Organization